

MOONEYHAM FLOWERS BERRY & KAROW, L.L.C.
TRIAL LAWYERS

June 19, 2008

Lee Coggiola, Esq.
Disciplinary Counsel
P.O. Box 11629
Columbia, SC 29211

Re: *Doe et al., v. The Bishop of Charleston, et al.*, 06-CP-18-1310; 06-CP-18-1311;
06-CP-18-1636

Dear Lee,

Enclosed please find a Petition to Appear as Amicus Curiae that I am today filing in the above referenced matter. This is the case that Gregg Meyers and I met with you about some time ago. I am providing a copy of this filing to you as part of my ongoing attempt to comply with my mandatory reporting obligation set forth in the Rules of Professional Conduct. I have documents to support these allegations in addition to what we provided to you at our previous meeting, specifically the billing records that are referenced. I will be happy to provide those to you or your staff at your request.

I would also like to inform you that since our meeting with you, Mr. Richter has filed suit against Gregg, me, and others and has alleged a broad conspiracy involving a number of alleged illegal acts in an unrelated case. I am informing you of this in the event that it is ever determined that I should have self reported these allegations. There is no merit to the allegations, but I am providing you this information out of an abundance of caution.

I will be happy to discuss either of these matters with you or your staff at your convenience. I enjoyed meeting you in person and I look forward to seeing you again.

Sincerely,

David Flowers

IN THE COURT OF COMMON PLEAS

06-CP-18-1310

06-CP-18-1311

06-CP-18-1636

Plaintiffs,

**PETITION TO APPEAR AS
AMICUS CURIAE**

V.

The Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity,

NOW COMES THE SOUTH CAROLINA VICTIM ASSISTANCE NETWORK

(“SCVAN”), by and through counsel, petitioning the Court to appear in this action as *amicus curiae* in order to point out to the Court numerous and serious problems with the purported resolution of this class action case brought allegedly on behalf of victims of sexual abuse by Catholic priests and other employees of the Diocese of Charleston.

The problems will be addressed herein, but preliminarily, the purpose of this petition is to bring to the attention of the Court, and hopefully the appellate courts of South Carolina, the grievous and offensive collusive nature of this settlement between the Bishop of Charleston; his general counsel Attorney Peter Shahid; some of the class counsel, particularly Attorney Lawrence Richter and his law firm; and possibly a Circuit Court judge.

In an effort to adequately advocate for the victims in this matter, SCVAN, with its long and rich history of fighting for crime victims across South Carolina intends to bring as much attention to this matter as possible in order to prevent these victims from being revictimized.

In support of this Petition, SCVAN would show the Court the following:

1. The South Carolina Victim Assistance Network, a 501(c)(3) organization, has been providing services and advocacy for victims of crime since 1984. It provides victim services, trains victim advocates, publicizes victim issues, and through its affiliate The South Carolina Crime Victim Legal Network provides direct *pro bono* representation to crime victims in criminal proceedings.
2. The Diocese of Charleston has a long and disturbing history of enabling and protecting pedophile priests in Charleston and other areas of South Carolina.
3. The Bishop Robert Baker who oversaw this collusive settlement has on at least one occasion sought to reinstate to active ministry a priest who admitted to sexually molesting a 10 year old girl.
4. The Bishop's general counsel Attorney Peter Shahid participated in that effort and sought comment from the victim's family as part of the Bishop's deliberative process.
5. The fact that a Catholic Bishop was entertaining the notion of placing a pedophile priest back into active ministry reveals that Bishop's intent to create opportunities for the pedophile priest to assault more children, in spite of his hollow public words which pretend to express sorrow for victims.
6. The Bishop's further words about justice for victims are clearly demonstrated to be false by this purported settlement which is among the worst of its kind in the United States of

America and was brought about by collusion between him, his general counsel, some of the class counsel, and potentially a Circuit Court judge.

7. Victims of sexual abuse have a difficult time trusting people. For that reason, it is imperative that they clearly understand the background of who is 'making deals' for them, and about potential personal (and professional) conflicts of interest of that person or persons. In his Affidavit in support of class counsel's request for a \$2.5 million fee, that was to be paid before any claimant even got to file a claim, Attorney Lawrence Richter states the following:

"My relationship with the Diocese of Charleston is lifelong. Since birth I have been a practicing catholic. My first twelve years of education was received in the catholic schools of Charleston. I am a graduate of Christ the King and Bishop England High School. My children are all Bishop England graduates. For many years I and my family have been active members of St. Mary's Church, and I have functioned in many capacities there including as Eucharistic Minister and Lector (positions now referred to as "Extraordinary Ministers"). I have many close ties and lifelong relationships in the catholic community and have enjoyed friendships with many priests and bishops of the diocese."

8. Mr. Richter offers this statement to the court after he has entered into the deal with his friend the Bishop, and after he has had the case transferred to a court of his choosing where he could receive approval of the deal pursuant to the scheme agreed upon by the parties.
9. During the course of this litigation, Richter has served in his official capacity as an Extraordinary Minister of the Diocese on at least one occasion, at a funeral.

10. Nowhere in any notice to any of the absent class members, or any other class members, is this information about Richter's close, deep and lifelong relationship to the supposed adverse party provided to the victims of sexual abuse perpetrated by priests and employees of the diocese, some of whom might have been friends of Mr. Richter. This constitutes a conflict of interest set forth in Rule 1.7 of the South Carolina Rules of Professional Conduct, and this information should have been provided to all class members prior to the time they were required to decide whether to participate in the deal that Richter had struck with his friend, the Bishop, but it was not.
11. It is axiomatic that a victim of sexual abuse should know that the person who purports to represent his or her interests is, in fact, an Extraordinary Minister of the very Diocese that is supposed to be the adversary in the litigation. This is especially true in light of the unusual and extremely questionable conduct in this case.
12. The billing records of The Richter Law Firm contain numerous questionable, and unethical, entries. These entries either were not adequately reviewed or were not reviewed at all by Judge Diane Goodstein when she approved the \$2.5 million fee requested. Some examples of these entries include, but are not limited to, the following:
- A single lawyer billing for more than 24 hours in a single day, always by Attorneys Larry Richter and his partner David Haller. This is done on numerous occasions, including numerous entries for 30 and 40 hours, and other entries of 51.5, 60, 80, and a whopping 92 hours in a single day!
 - The 92 hours in a day occurred on the day following one of the 80 hour entries.

- An attorney sending himself an e-mail 55 times in one night, and charging 0.5 hours for each transmission for a total of 22.5 hours, even though the e-mails were apparently sent simultaneously at midnight.
- An attorney billing 10 hours on the 30th of virtually every month for about three years for “Oversight and Review”, including in 2004 and 2005, billing on February 30th, a day that does not exist on regular calendars.
- A great percentage of the hours used to justify the unreasonable \$2.5 million fee predate the filing of the class action suit and were expended pursuing individual cases, and for which it is believed the lawyers may have already been compensated.
- No time entry for The Richter Law Firm is smaller than one half hour and all entries larger than a half hour are all in whole hour increments.
- A great deal of the time billed is to effectuate the inexplicable transfer of Charleston County cases to Dorchester County after they were settled in order for Judge Goodstein to handle the cases exclusively, to further the collusion being perpetrated on the court by the Bishop of Charleston, his general counsel Attorney Peter Shahid and The Richter Law Firm.

13. These cases were originally filed in Charleston County, where they belong. Two of the cases were filed in May and August of 2005. Attorney Richter says in his Affidavit in support of the \$2.5 million fee that he first met with the Bishop about this matter in October 2005. Two months after that, a class action complaint was filed.
14. Six months later, in June 2006, all of these pending cases were settled by way of mediation, in Charleston.

15. As part of the deal, the parties agreed to move the cases out of Charleston County and Attorney Larry Richter was given the sole authority to choose the venue. He chose Dorchester County.
16. Judge Goodstein, who presides in Dorchester County, and her husband are personal friends of Attorney Larry Richter.
17. When challenged as to why the cases were in Dorchester County, Richter's only response was, "Have you ever tried to get a motion scheduled in Charleston County?" He apparently believed, or must have known, that his friend would schedule motions for him promptly, which she in fact did.
18. Nothing in the public record demonstrates that there was ever a delay or difficulty in getting motions heard in Charleston County when the cases were pending there. In fact, what the record shows is that class counsel failed to file motions that should have been filed and heard in the cases before they were transferred to Dorchester County as part of the deal between the lawyers.
19. Apparently as part of the deal, the parties then set about on a course of conduct to mislead the court in Charleston County and transfer the already settled cases to Dorchester County, where in one of her first official acts in the cases, instead of questioning why settled cases were being refiled in her court, Judge Goodstein signed an Order declaring the cases as complex and assigning exclusive jurisdiction of them to herself.
20. At no time while the cases were pending in Charleston County did class counsel seek designation of the cases as complex or certification of the class pursuant to Rule 23 SCRPC.

21. In effectuating the transfer of the cases, the lawyers filed cases in Dorchester County on behalf of the clients who had already settled their cases in Charleston County. Then, two months later, they provided Consent Orders of Dismissal to a Judge in Charleston County to dismiss the still pending Charleston County cases. There is nothing in the public record that indicates that the Bishop or the lawyers ever alerted the judge in Charleston County that the cases were settled OR that they had already been refiled in Dorchester County. There is also nothing in the public record that indicates that class counsel complied with Rule 23 SCRCP to show to the court how the rights and interests of the absent class members were not adversely affected by the dismissal of the cases.
22. This is interesting in light of time entries for The Richter Law Firm which show that a Consent Order to Change Venue was worked on but apparently never presented to a judge. These time entries were used, however, as part of the time submitted to justify the unreasonable \$2.5 million fee.
23. Judge Goodstein tentatively approved the class settlement in January, 2007. She did so in spite of the fact that the class representatives were not proper representatives in that their claims were already settled, and they would not have to subject themselves to the arbitration process that all other class members were compelled to engage in after surrendering all rights of review and appeal. She merely put the court's imprimatur on the deal that had been struck between the Bishop, his lawyer and his Extraordinary Minister, Attorney Larry Richter, prior to the cases being moved from Charleston to her court, without any serious analysis or judicial oversight.
24. Notice that was provided to absent members was not adequate. Notice was published only in South Carolina papers, in spite of representations by class counsel that it would be

nationwide. Providing notice only to South Carolina residents ignores the reality, and the Bishop's own experience, that many victims of his priests' sexual deviancies move out of South Carolina. Judge Goodstein did not order any notice outside of South Carolina.

25. In fact, in the known record, there is not a single instance of Judge Goodstein taking issue with any aspect of the deal. Further, when significant errors and deficiencies were brought to her attention by way of proper objections to the deal, she responded by punishing the lawyer who filed them and his clients, even though the objections resulted in material and beneficial changes to the class.

26. In response to the material changes to the class settlement brought about by the objections, class counsel always responded that the deficiencies were 'scrivener's errors'.

27. The only time Judge Goodstein expressed any concern at all about the deal was when she ordered a solicitor to conduct an investigation regarding a document that was brought to her attention from the Diocese's files. It was an opportunity for her to utilize her judicial authority to insure that a fair and thorough investigation was conducted on behalf of the victims in this matter. In the end, however, she was satisfied when the solicitor reported back that he had spoken with someone in Massachusetts and with the general counsel of the Bishop, Attorney Peter Shahid, who as mentioned above had already been involved in trying to move a pedophile priest back into active ministry, and was to be transferred to another part of the country. Such a woefully inadequate investigation should not have been countenanced by this Judge. But, she apparently was satisfied and got the deal back on track.

28. It is not known at this time how many claimants entered into the arbitration process, or how much their total awards were, but the end result is very curious, and apparently the

Bishop, the lawyers, and the arbitrator, will say entirely coincidental. From a total potential pool of \$12 million, the \$2.5 million attorneys' fee and approximately \$100,000 in costs was paid first. The Diocese entered into a separate agreement with some of the objectors' counsel (negotiated by the undersigned) to resolve their claims outside of the class action process for a total of \$1.4 million.¹ So, the arbitrator, who mediated the original agreement, and who also mediated the side agreement with the objectors, knew that anything over \$8 million total to the claimants would require the Bishop to go back to Rome for more money to pay the side agreement with the objectors. He knew this was an issue of great concern for the Bishop. At the end of the arbitration process, while the exact amount of awards is not known, it is "very close to the limit, very close" according to the arbitrator. It may be a coincidence, but it certainly is a convenient one for the Bishop, his lawyer and his Extraordinary Minister.

29. It is interesting that all activity has now come to a halt in this class action case even though it was 'days away' from conclusion in February and a final proposed Order was reportedly submitted to Judge Goodstein in March. Apparently the parties and Judge Goodstein are waiting for the unrelated objectors' case pending in Charleston County to be transferred to this court before concluding the class action. The Diocese and its lawyer have filed a motion to have that case transferred to this court, and Judge Goodstein has made inquiry as to why that case is not in her court.

¹ The Bishop and his lawyer have refused to abide by this settlement and have required these objectors to file litigation in Charleston County to enforce the settlement. That agreement specifically provides that the monies to fund that settlement are not part of the \$12 million pool, but the Bishop did hope to use surplus funds from the \$12 million in that case. So, it was in his interest to have the class claimants' total awards not exceed \$8 million. Interestingly, the Bishop and his lawyer have filed a motion to have that case moved from Charleston County to Judge Goodstein's court in Dorchester County. That motion is currently pending. The undersigned is counsel of record in that case.

30. The rights of the class members, except for the class representatives, have been adversely impacted by this collusion between the Bishop, his lawyer and his Extraordinary Minister. Many victims who participated in the claims process were dissatisfied with the awards, but they had to relinquish any appeal or review rights before they could make a claim.
31. All of the above is clear evidence that something very disturbing is at the very heart of this 'deal'. An independent review of all of the above should be undertaken prior to any final orders being signed in this matter.
32. SCVAN does not seek to undo the financial compensation to the victims who have received it. Rather, it seeks to have the court determine a more reasonable fee for class counsel and to distribute the balance, once disgorged, to the victims on a *pro rata* basis, or to be used to compensate any additional victims who might come forward as a result of reasonable notice to absent members. Further, the Diocese should be compelled to pay the balance of the \$12 million pool to the victims. Justice requires nothing less.

WHEREFORE, THE PETITIONER SCVAN seeks *amicus curiae* status with this court to further develop and point out serious problems with 'The Deal', and the handling of it by the judge who took exclusive jurisdiction of the case for her personal friend. At a minimum, the following should occur prior to Judge Goodstein signing any more Orders or taking ANY further action in this matter:

1. Judge Diane Goodstein should recuse herself from this matter immediately;
2. A different Circuit Court Judge should appoint substitute class counsel, or at least a guardian for the victims, to review all of the matters pointed out herein and take all appropriate steps to protect the interests of the victims who have been

adversely impacted by this collusive deal struck between the Bishop and his Extraordinary Minister;

3. Notice should be given nationwide about this deal so that all interested absent class members can participate if they choose to;
4. The victims who have already participated in this deal's arbitration process should be given actual notice of the irregularities set forth herein so they may seek legal counsel, other than the Bishop's Extraordinary Minister, to be advised about their rights;
5. The lawyers presently at or formerly at The Richter Law Firm, specifically Larry Richter and David Haller, should self report themselves to the Office of Disciplinary Counsel for their unethical billing practices and for collusion;
6. Attorney Peter Shahid should self report himself for turning a blind eye to the unethical billing practices of The Richter Law Firm, for failing to fulfill his mandatory reporting obligation under the Rules of Professional Conduct, and for collusion;
7. Judge Goodstein should self report herself to the Commission on Judicial Conduct, a panel of which she is a member;
8. The balance of the \$12 million settlement pool should be paid into an escrow account free of the control of the Bishop, his Extraordinary Minister, or anyone else affiliated with this deal.;
9. Class counsel should disgorge all of the \$2.5 million fee it received and it be placed into an escrow fund free of the control of the Bishop, his Extraordinary

Minister, or anyone else affiliated with this deal, until an independent analysis may be done and a more reasonable fee awarded;

10. The entire claims process should be subjected to an independent review, including the matrix which was utilized to determine compensation to the victims, which was the product of the collusion between the Bishop, his lawyer and his Extraordinary Minister;
11. The claims process should be reopened and notice given nationwide so other victims may learn of it and participate in a modified process if they so choose;
12. If any of the \$2.5 million attorneys' fee is determined to be excessive, those funds should be distributed to the victims in the class on a *pro rata* basis;
13. Such other relief and participation as the court may grant to this *amicus*.

RESPECTFULLY SUBMITTED,



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Attorney for Petitioner SCVAN

Date: June 19, 2008